

47



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,205	01/28/2002	James Samsoondar	213202.00361	6872

27160 7590 04/23/2003

PATENT ADMINSTRATOR
KATTEN MUCHIN ZAVIS ROSENMAN
525 WEST MONROE STREET
SUITE 1600
CHICAGO, IL 60661-3693

EXAMINER

BROWN, KHALED

ART UNIT	PAPER NUMBER
----------	--------------

2877

DATE MAILED: 04/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,205

Applicant(s)

SAMSOONDAR ET AL.

Examiner

Khaled Brown

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Fodgaard et al (US 5817007).

Re clms 1,6,8: Fodgaard et al discloses a method for determining a concentration of one or more of hemoglobin, billrubin, biliverdin, equivalent intralipid, methylene blue and cross-linked hemoglobin in a sample contained in a blood bag or in tubing in fluid communication with said blood bag, using an instrument comprising one or more calibration algorithms for each of said hemoglobin, bilirubin, biliverdin, equivalent intralipid, methylene blue and cross-linked hemoglobin, said method comprising: a) irradiating said sample in said tubing or said blood bag using a radiation source of about 475 nm to about 2,700 nm (Col 8 line 47);
b) measuring absorbance from said sample for said one or more of hemoglobin, billrubin, biliverdin, equivalent intralipid, methylene blue and cross

Art Unit: 2877

linked hemoglobin (Col 5 lines 1-5); and

c) calculating a concentration for one or more of said hemoglobin, bilirubin, biliverdin, equivalent intralipid, methylene blue and cross-linked haernoglobin using said absorbance and said one or more calibration algorithms, by combining first derivatives of at least two portions of a spectrum generated from said absorbance to provide said concentration (Col 6 lines27-55).

Re clm 2: combines first derivatives of at least two portions of a spectrum (Col 8 line 47)

Re clm 3: tube is translucent and contains writing on its surface (Col 16 lines21-35 writing on blood tube is inherently disclosed)

Re clm 4: Reflecting Radiation (Col 12 lines 17-22)

Re clm 5: compensating for light leakages by measuring dark current (Col 6 lines 15-25)

Re clm 7:measuring uses algorithm (Col 6 lines27-55).

Claims 1-4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bonner (4522494).

Re clm 1, 8: Bonner discloses a method for determining a concentration of at least one analyte in a sample contained in a blood bag or in tubing in fluid communication with said blood bag, using an instrument comprising at least one calibration algorithm for said at least one analyte, said method comprising:

a) irradiating said sample in said tubing, or said blood bag (Col 2 line 1), using a radiation source of about 475 nm to about 2,700 nm (Col 1 line 60);

Art Unit: 2877

b) measuring absorbance from said sample for said at least one analyte (Col 2 lines 30-35); and

c) calculating a concentration of said at least one analyte using said absorbance and said at least one calibration algorithm (Col 2 lines 19-22).

Re clm 2: combines first derivatives of at least two portions of a spectrum (Col 2 lines 13-15)

Re clm 3: blood bag is translucent and contains writing on its surface (Col 3 line 57
writing on blood storage is inherently disclosed)

Re clm 4: Reflecting Radiation (being performed by laser 12)

Re clm 6: equivalent intralipid (platelets)

Re clm 7: measuring uses algorithm (Col 2 lines 19-22)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonner (US 4522494) in view of Weythman (US 4128830).

Re clm 5: Bonner discloses the claimed invention as noted above including making measurements with a photodetector (Bonner 37). However Bonner does not disclose compensating for light leakages by measuring dark current. Weythman teaches compensating for light leakages by measuring dark current when taking measurements with a photodetector because it increases the sensitivity of the photodetector (Weythman Col 1 lines 52-55). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to compensate for light leakages by measuring dark current when making measurements with the photodetector of Bonner because it would increase the sensitivity of the photodetector of Bonner as taught by Weythman.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jones et al 3737096, Aoki et al 4707147, Karkar et al 5066859,

Art Unit: 2877


Lundsgaard et al 5288646, Heinemaan et al 5291884, Purdy et al 5360004 and Bellhouse et al 4675019.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khaled Brown whose telephone number is 703-306-5738. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on 703-308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.

KB
April 17, 2003


Frank G. Font
Supervisory Patent Examiner
Technology Center 2800